

RECEIPT NUMBER
37633

12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES D. MICKEY,

Plaintiff,

v.

ZEIDLER TOOL & DIE COMPANY, a Michigan
corporation, and HAROLD DeFORGE, an
individual,

Defendants.

JUDGE : Edmunds, Nancy G.
DECK : S. Division Civil Deck
DATE : 01/31/2005 @ 12:40:44
CASE NUMBER : 2:05CV70340
CMP CHARLES D. MICKEY VS ZEIDLER
TOOL AND DIE CO (LE)

Teresa J. Gorman (P61001)
Teresa J. Gorman PLLC
Attorney for Plaintiff
30150 Telegraph Road
Suite 345
Bingham Farms, MI 48025
(248) 223-9922

MAGISTRATE JUDGE VIRGINIA M. MORGAN

COMPLAINT AND JURY DEMAND

Plaintiff, CHARLES D. MICKEY, by and through his attorneys, and brings this
Complaint as follows:

1. This is an action for violations of the Age Discrimination in Employment Act, 29 USC §621, et seq., the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act, 29 USC §630(f), and the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548 (101) et seq.
2. Plaintiff is a resident of the City of Troy, Oakland County, Michigan.
3. Defendant Zeidler Tool & Die Company is a Michigan corporation doing business in the City of Fraser, Macomb County, Michigan.

4. Defendant Harold DeForge is an individual who resides in the State of Michigan.

5. The acts giving rise to this complaint took place in Macomb County, Michigan, in the Eastern District of Michigan.

6. The court has jurisdiction of this matter pursuant to 28 USC § 1331.

7. Venue is proper in this court.

8. Plaintiff demands that the issues in this case be tried to a jury in accordance with the Seventh Amendment to the U.S. Constitution and Rule 38(b) of the Federal Rules of Civil Procedure.

9. Plaintiff was continuously employed by Defendant Zeidler Tool & Die Company from October 1971 through October 2004.

10. Throughout the duration of his employment, Plaintiff performed his duties in a satisfactory or above manner.

11. Throughout the duration of Plaintiff's employment, Defendant Harold DeForge was Defendant Zeidler Tool & Die Company's owner and Plaintiff's direct supervisor.

12. During his employment, Defendants treated Plaintiff differently from similarly situated non-minority employees in the terms and conditions of employment, based on unlawful consideration of age.

13. Plaintiff was born on November 28, 1940 and was 63 years of age at the time of his termination.

14. On or about January 1, 2004, Defendant Harold DeForge directed Plaintiff to retire from employment with Defendant Zeidler Tool & Die Company.

15. Plaintiff refused to retire from employment with Defendant Zeidler Tool & Die Company.

16. When Plaintiff refused to retire, Defendant Harold DeForge, among other things, reduced Plaintiff's wages.

17. When Plaintiff refused to retire, Defendant Harold DeForge, among other things, reassigned Plaintiff from an exempt salary status to a non-exempt hourly status so as to rescind all benefits afforded to exempt employees.

18. When Plaintiff refused to retire, Defendant Harold DeForge, among other things, rescinded company-paid health benefits from Plaintiff thus requiring that he pay the full premium for health benefits.

19. Younger employees of Defendant Zeidler Tool & Die Company are provided with company-paid health benefits.

20. On October 7, 2004, Plaintiff filed a charge of age discrimination with the Equal Employment Opportunity Commission ("EEOC").

21. On October 19, 2004, subsequent to receiving a copy of the charge from the EEOC, Defendants terminated Plaintiff's employment.

22. On December 13, 2004, Plaintiff filed a second charge of retaliation with the EEOC.

23. Plaintiff brings this action within 90 days of receiving his notices of right to sue.

COUNT I
AGE DISCRIMINATION IN VIOLATION OF THE
AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 USC § 621, et seq.

24. Plaintiff incorporates by reference paragraphs 1-23.

25. While employed by Defendants, Plaintiff was subjected to age discrimination by Defendants, said acts being made unlawful by the Age Discrimination in Employment Act of 1967, 29 USC §621, et seq., and said acts including but not limited to:

- a. demanding that Plaintiff retire;
- b. reducing Plaintiff's wages when Plaintiff refused to retire;
- c. reassigning Plaintiff from an exempt salary status to a non-exempt hourly status so as to rescind all benefits afforded to exempt employees when Plaintiff refused to retire; and
- d. rescinding company-paid health benefits from Plaintiff thus requiring that he pay the full premium for health benefits when Plaintiff refused to retire;
- e. discharging or otherwise discriminating against Plaintiff with respect to his employment, compensation, or a term, condition or privilege of employment, because of age;
- f. limiting, segregating, or classifying Plaintiff in a way which deprived or tended to deprive Plaintiff of an employment opportunity or otherwise adversely affecting the status of Plaintiff because of age;
- g. segregating, classifying or otherwise discriminating against Plaintiff on the basis of age with respect to a term, condition or privilege or employment, including a benefit plan or system;
- h. failing to provide a work environment free from age discrimination.

26. Plaintiff's employment was terminated by Defendant in whole or in part because of his age, to-wit: 63 years old, said act being made unlawful by the Age Discrimination in Employment Act of 1967, 29 USC §621, et seq.

27. As a direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act of 1967, Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

28. As a further direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act, 29 USC §621, et seq., Plaintiff has been placed in financial distress and has suffered a loss of earnings and benefits, and a loss of and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to employ the services of an attorney to bring this lawsuit and will suffer additional damages in the future.

COUNT II
AGE DISCRIMINATION IN VIOLATION OF THE
AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, 29 USC § 621, et seq.,
AS AMENDED BY THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990,
29 USC §630(f)

29. Plaintiff incorporates by reference paragraphs 1-28.

30. While employed by Defendants, Plaintiff was subjected to age discrimination by Defendants, said acts being made unlawful by the Age Discrimination in Employment Act of 1967, 29 USC §621, et seq., as amended by the Older Workers Benefit Protection Act of 1990, 29 USC §630(f), and said acts including but not limited to:

a. reassigning Plaintiff from an exempt salary status to a non-exempt hourly status so as to rescind all benefits afforded to exempt employees when Plaintiff refused to retire;

b. rescinding company-paid health benefits from Plaintiff thus requiring that he pay the full premium for health benefits when Plaintiff refused to retire;

c. otherwise discriminating against Plaintiff with respect to his employment, compensation, or a term, condition or privilege of employment, because of age;

d. limiting, segregating, or classifying Plaintiff in a way which deprived or tended to deprive Plaintiff of an employment opportunity or otherwise adversely affecting the status of Plaintiff because of age; and

e. segregating, classifying or otherwise discriminating against Plaintiff on the basis of age with respect to a term, condition or privilege or employment, including a benefit plan or system.

31. As a direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act of 1967, 29 USC §621, et seq., as amended by the Older Workers Benefit Protection Act of 1990, 29 USC §630(f), Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

32. As a further direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act, 29 USC §621, et seq., as amended by the Older

Workers Benefit Protection Act of 1990, 29 USC §630(f), Plaintiff has been placed in financial distress and has suffered a loss of earnings and benefits, and a loss of and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to employ the services of an attorney to bring this lawsuit and will suffer additional damages in the future.

**COUNT III
RETALIATION IN VIOLATION OF THE
AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 USC § 621, et seq.**

33. Plaintiff incorporates by reference paragraphs 1-32.

34. Plaintiff's employment was terminated by Defendants in whole or in part in retaliation for Plaintiff having complained about Defendants' discriminatory employment practices described above and for having filed a charge of discrimination with the EEOC, in violation of the Age Discrimination in Employment Act, 29 USC § 621, et seq.

35. Defendant's actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

36. As a direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act of 1967, 29 USC §621, et seq., Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

37. As a further direct and proximate result of Defendants' violation of the Age Discrimination in Employment Act, Plaintiff has been placed in financial distress and has suffered a loss of earnings and benefits, and a loss of and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to employ

the services of an attorney to bring this lawsuit and will suffer additional damages in the future.

**COUNT IV
AGE DISCRIMINATION IN VIOLATION OF THE
ELLIOTT-LARSEN CIVIL RIGHTS ACT,
MCLA 37.2101 ET SEQ., MSA 3.548(101) ET SEQ.**

38. Plaintiff incorporates by reference paragraphs 1 through 37.

39. At all material times, Plaintiff was an employee, and Defendants were his employer, covered by and within the meaning of the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq.

40. Plaintiff's age was at least one factor that made a difference in Defendants' decision to discriminate against Plaintiff.

41. Defendants knowingly and willingly discriminated against Plaintiff on the basis of his age in violation of the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq.

42. As a direct and proximate result of Defendants' violation of Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq., Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

43. As a further direct and proximate result of Defendants' violation of the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq., Plaintiff has been placed in financial distress and has suffered a loss of earnings and benefits, and a loss of and impairment of his earning capacity and ability to work, and will so suffer in the

future; he has been required to employ the services of an attorney to bring this lawsuit and will suffer additional damages in the future.

**COUNT V
RETALIATION IN VIOLATION OF THE
ELLIOTT-LARSEN CIVIL RIGHTS ACT,
MCLA 37.2101 ET SEQ., MSA 3.548(101) ET SEQ.**

44. Plaintiff incorporates by reference paragraphs 1-43.

45. Plaintiff's employment was terminated by Defendants in whole or in part in retaliation for Plaintiff having complained about Defendants' discriminatory employment practices described above and for having filed a charge of discrimination with the EEOC, in violation of the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq.

46. This retaliation occurred, in part, because Plaintiff engaged in protected activity pursuant to the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq.

47. Defendants' conduct violated the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq.

48. As a direct and proximate result of Defendants' violation of Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq., Plaintiff has suffered depression, emotional and physical distress, mental and physical anguish, loss of reputation, humiliation and embarrassment and the physical effects associated therewith, and will so suffer in the future.

49. As a further direct and proximate result of Defendants' violation of the Elliott-Larsen Civil Rights Act, MCLA 37.2101 et seq., MSA 3.548(101) et seq., Plaintiff has been placed in financial distress and has suffered a loss of earnings and benefits, and a

loss of and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to employ the services of an attorney to bring this lawsuit and will suffer additional damages in the future.

WHEREFORE, Plaintiff requests that this Court enter judgment against Defendants as follows:

- A. compensatory damages in whatever amount Plaintiff is found to be entitled;
 - B. exemplary damages in whatever amount Plaintiff is found to be entitled;
 - C. punitive exemplary damages in whatever amount Plaintiff is found to be entitled;
 - D. liquidated damages in whatever amount Plaintiff is found to be entitled;
 - E. an award of back pay and the value of lost fringe benefits, past and future;
 - F. an award of interest, costs, and reasonable attorney fees;
 - G. whatever other relief appears appropriate at the time of final judgment;
- and
- H. whatever other relief may appear appropriate when this court's final order is entered.

TERESA J. GORMAN, PLLC

By: *Teresa J. Gorman*

Teresa J. Gorman (P61001)

Attorney for Plaintiff

30150 Telegraph Road, Suite 345

Bingham Farms, MI 48025

(248) 223-9922

Dated: January 31, 2005

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Macomb

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

CHARLES D. MICKEY

(b) County of Residence of First Listed

Oakland**DEFENDANTS**

ZEIDLER TOOL & DIE COMPANY, a Michigan corporation, and HAROLD DeFORGE, an individual

County of Residence of First Listed

Macomb

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(C) Attorney's (Firm Name, Address, and Telephone Number)

Teresa J. Gorman PLLC
30150 Telegraph, Ste 345, Bingham Farms, MI 48025
(248) 223-9922

Attorneys (If Known)

NANCY G. EDMUNDS
MAGISTRATE JUDGE VIRGINIA M. MORGAN

11. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 11)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- Citizen of This State ☐ PLA 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ PLA 4 ☐ DEF 4
- Citizen of Another ☐ PLA 2 ☐ DEF 2 Incorporated and Principal of Business In Another State ☐ PLA 5 ☐ DEF 5
- Citizen or Subject of a Foreign Country ☐ PLA 3 ☐ DEF 3 Foreign Nation ☐ PLA 6 ☐ DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 (specify) ☐ 6 Multi district Litigation ☐ 7 Judge from District Appeal to District

V1. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Age discrimination and retaliation in violation of the Age Discrimination in Employment Act as amended by the Older Worker's Benefit Protection Act, 29 USC 621 et seq. and the Elliott-Larsen Civil Rights Act, MCL A 37.2101 et seq. MSA 3.548(101) et seq.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$DEMAND

75,000+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) INSTRUCTIONS:**

IF ANY

JUDGE

DOCKET NUMBER

DATE

1-31-05

SIGNATURE OF ATTORNEY OF RECORD

Teresa J. Gorman

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
